

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAMION G.V DAVIS

Plaintiff

v.

OFFICER KENNEDY, et al.,

Defendant[s]

CIVIL ACTION # 1:18-cv-02286

(JONES, J.)

(MEHALCHICK, M.J.)

JURY TRAIL DEMANDED

SECOND AMENDED COMPLAINT

AND NOW, comes the plaintiff, Damion G.V Davis, Pro-Se, who files this civil action and complaint for the reason explained below:

STATEMENT OF JURISDICTION

I. PRELIMINARY STATEMENT

* MR. DAVIS respectfully submits this Civil action and complaint which contains both FEDERAL and STATE claims. Herein Mr. Davis gives details of the officer's and State NEGLIGENCE by their deliberate action and by violating Mr. Davis Fourth & EIGHTH AMENDMENT rights, Federal Statutory, constitution rights, liberty rights under [the] States Law and [doctrine] for Defendants "superior", and also vicarious liability and his request for recovery in damages.

II. JURISDICTION AND VENUE

1. This action arises under the law of The middle district of Pennsylvania and is within the subject matter and jurisdiction of The middle district court of Pennsylvania.
2. This court has supplement jurisdiction over The federal claims stated herein by reason of 28 U.S.C. §1337.
3. This court has jurisdiction over the state claims by reason of 42 Pa. C. S. A. §931.
4. Venue is proper by reason of Pa. R. Civ. P. 106.

III PARTIES

- At all times relevant to the cause of action herein stated that on "MARCH 1st, 2017" after 12" o'clock midnight.
- At all time relevant to the cause of action herein state, defendant(s) Officer KENNEDY, Officer MILLER and the state of PENNSYLVANIA
- At all time relevant to the cause of action herein stated the defendant are employed by the state of pennsylvania.
- At all time relevant to the cause of action herein stated, The State of PENNSYLVANIA, is one of the Defendant(s), their the one who employed those two officer's to proform a certain duty to the community, to (p)rotect and (s)urvie and to act (a)ccordingly with the States (P)rocedures under the constitution.

IV. FACTUAL ALLEGATIONS

- The State [E]valuation of These officers was not conducted under a mental awareness of a proper examination of These employees of the state of Pennsylvania.
- The State employed These officers to keep the peace, uphold the law and to survive the community, which was a breach of contract when they did the opposite, and if the State failed to punish their employees for that breach it became a sign

of Negligence.

The State ~~finds~~ the Department, that hires the officers, which cause the damages to Mr. Davis and his family.

The State knew that the officer(s) investigatory stop would be constitutes as an unlawful seizure under the fourth Amendment but took it to trials away knowing that these officer(s) would ~~change~~ their statement under oath.

The State Should of consider the severity of the crime, to see if Mr. Davis was an immediate threat to the safety of the officers or others, was Mr. Davis resisting arrest, was he attempting to flee from the scene or trying to crash the officer's car.

8. The State neglected to prove that Mr. Davis was in fact intoxicated by checking his blood level by means of a "breathalyzer" or by taking the blood of the plaintiff to see his blood alcohol level (BAC) to prove public intoxication, but yet he was charged and convicted of such crimes.

9. The State is responsible for their negligence, because the District Attorney works for the Commonwealth which is the State of Pennsylvania and for the State to find Mr. Davis guilty of public intoxication and resisting arrest after ^{the} ~~knowing~~ about the officer(s) unreasonable seizure under the Fourth Amendment was negligence of the Commonwealth.

10. The District Attorney connection with the State and the misconduct of the two officer(s) which resulted in Mr. Davis injury was negligence.

11. The duty of the State under all circumstances is to uphold the law, constitution and to find the truth. To overlook these facts because of trying to protect the notion that these two officers and their department did not breach their duties by attacking a civilian causing bodily injuries to the head, in the way of shifting the brain which resulted in Mr. Davis concussions is negligence. And for these same officer(s) to cause Mr. Davis

physical and mental pain, which also resulted in placing a void in their lives, by the loss of their first born child was also negligence of the State and the Officer(s) who work for that State.

12. Mr. Davis alleged that the State of Pennsylvania police Department failed to (remove) the officer(s) from their duties after having so many misconducts and unlawful arrests. The State and police department were negligent in causing or permitting the officer(s) to continue their duties after so many complaints. See Bennett v Pennsylvania, 25 phila 1999, 1992, philo City Optr, Lexis 131, C.P.C.C.P (1992).

13. Wrongful death and State negligence (in the commonwealth) It is negligence to permit third person to use things or engage in an activity, which ^{is} under control of the actor.

14. The police knew that the State would not take any action of their offences. The State in those situations neglected to rebuke or punish the perpetrators of the crime; all complaints of the victims in those cases. The state did not respond or ~~not~~ ^{TAKE} action to punish those officers involved.

15. Pursuant to Pa. R. Civ. P. 1020(c) it is permissible for plaintiff to seek alternative relief based upon different legal theory when they were advised that their petition was going to be denied. Schreiber v. Republic Intermodal Corp, 473 Pa. 614, 375 A.2d 1285, 1971 Pa. Lexis 755 (1971).

V. EXHAUSTION

* The plaintiff has exhausted all available administrative remedies allowed, by filing complaints and complying with the Department policy, Agency(s) and now the Middle District Court.

VI. CAUSE OF ACTION

COUNT 1

Deprivation of my Amendment Right(s)
(Against all Defendant's)

* The plaintiff incorporate IV paragraphs 1 through 15 of this complaint as set forth therein.

(a) All Defendant(s) act and omission in failing to uphold the Law, constitution and Amendment by causing both physical and mental injuries, therefore violating the plaintiff's Liberty Right(s) of the United States Constitution.
(7)

COUNT II

Negligence

(Against all Defendant(s))

The plaintiff incorporates IV paragraphs 1 through 15 of this complaint as it set forth therein.

1. At all times relevant to the cause of action herein stated, the individual defendant(s) made a sworn oath to protect and serve they State and their community incorporating Procedures under the Constitution and to breach ^{that} oath is failing to uphold the Constitution.

2). PENNSYLVANIA Law recognize that, in certain context, one who undertakes to render services to another may be subject to liability to a third party for failure to exercise due care in rendering those services, when the services were necessary for the protection of that third party.

COUNT III

Negligence

ordinary versus professional

The plaintiff incorporates IV paragraphs 1 through 15 of this complaint as it set forth therein.

3. To determine whether Mr. Davis Claims is one of Ordinary or professional Negligence, the court must look to the substance, rather than the form of the complaint. Id. at 501; See also VARNER V. CLASSIC COMMUNITIES CORP., 2006 Pa. Super. 2, 890 A.2d 1068, 1074 (Pa. Super. Ct. (91)

• 2006) "stating" that it is the substance of the complaint rather than it's from which controls whether [a] claim... sound in ordinary negligence or professional. The Pennsylvania Supreme court stated that whether a negligence claim is professional versus ordinary negligence deals primarily with the breach of a professional standard of care.

COUNT IV

Negligence and Vicarious Liability
(Against all Defendant(s))

a) The plaintiff incorporates IV paragraphs 1 through 15 of this complaint as it set forth fully therein.

b) The defendant(s) outline in this complaint are Vicariously liable for the acts(s) of negligence against the plaintiff by the State of Pennsylvania and it's employees, who at all times are relevant to the cause of action herein.

b). Under 42 P.S. § 2004.3, Mr. Davis alleged he was injured by the two officer(s) while he was in front of his home at 60 East Louther Street which is located in Carlisle, Pennsylvania on the night of March 1st, 2017, venue was proper in the Middle District Court. See Simons v. State Correction Inst., 150 Pa. Commw. 295, 615 A.2d 924, 1992 Pa. Commw. Lexis 575 (Pa. Commw. Ct. 1992).

COUNT V

Negligence and the four elements
(Against all Defendant(s))

The plaintiff incorporates IV paragraphs 1 through 15 of this complaint

as it fully set forth therein.

1. Negligence is established by proving the following four elements

- (1) A duty or obligation recognized by law;
- (2) A breach of that duty;
- (3) A causal connection between the conduct and the resulting injury;
- (4) Actual damages;

COUNT VI
Negligence of Duty
(Against all Defendants)

The plaintiff incorporates ~~IV~~ paragraphs 1 through 15 of this complaint as it set forth herein.

- 1) Under 18 U.S.C. § 4042(a). The State has a duty to provide for the safe-keeping, care and subsistence and for the protection of all persons charged with or convicted of offenses against the United States.
- 2). The duty of care as provided by 18 U.S.C. § 4042 is that of ordinary diligence to keep Mr. Davis safe from harm. This duty of care is heightened when a person is known to have a condition that requires special treatment.
- 3) It was pointed out that Mr. Davis had suffered from post concussive syndrome on the night of March 1st, 2017. The State should have been more concerned about his injuries and the safety of Mr. Davis' wellbeing.

COUNT VII
Negligence (Breach)
(Against all Defendant(s))

* The plaintiff incorporate IV paragraphs 1 through 15 of this complaint as it set forth therein.

(a) The court of the third circuit, in limited circumstances have recognized that certain acts or omissions by police officers(s) can constitute as a breach of an ordinary negligence of duty. Finding that the State breached it's duty ~~of~~ by failing to reasonably treat Mr. Davis concussions. Holding that the denial of proper medical care can constitute a breach of care under 18 U.S.C. § 1401z.

(b) Finding a possible breach of duty and care related to Mr. Davis concussions. More specifically the State may breach it's duty of care by failing to Schedule Mr. Davis for necessary medical treatment in a timely fashion. see Aviles v. United States, 2012 U.S. Dist. Lexis 117041, 2012 WL 3562370, at *6 (E.D. Pa. 2012).

COUNT VIII
Negligence (causation)
(Against all Defendant(s))
(11)

* The plaintiff incorporates IV paragraphs 1 through 15 of this complaint as it set forth therein.

a) The third element Mr. Davis Must prove is that the State negligence caused his injury. In limited circumstances, Pennsylvania law permits recovery where a defendant(s) negligence increased the risk of harm to Mr. Davis and his wife Mrs. Davis, even if the plaintiff cannot show conclusively that no injury would have occurred in the absence of negligence.

b) When a plaintiff proceeds under a theory of increased risk of harm, Pennsylvania law requires a two-stage injury. (First) a court must determine whether "a defendant(s)" negligence act or omission increased the risk of harm to a person in Mr. and Mrs. Davis position, "and then" it becomes a question for the [Fact] Finder whether that increased risk was a [Factual cause] in producing the harm. (second) the injury itself.

COUNT IX

Negligence (increased Risk)
(Against all Defendant(s))

* The plaintiff incorporates IV paragraphs 1 through 15 of this complaint as it fully set forth therein.

a) Where the issue of increased risk involves question of medical causation that go beyond the knowledge of the average law person "the plaintiff is required to present expert testimony" with a reasonable

degree of Medical certainty.

(b) The Defendant(s) conduct increased the risk of harm that was actually sustained. In determining whether the experts opinion is rendered to the requisite degree of certainty, we examine the experts testimony in its entirety "Id. The purpose of this standard is not, however to render proof needlessly difficult, but to avoid speculation under the rubric of expert opinion.

VI. APPLICABLE LAW

* Mr. Davis claim of Negligence against the State is brought under the "FTCA", 28 U.S.C. §§ 1334, 261, et seq. The "FTCA" provides much needed relief to those suffering from injury cause by the Negligence of the government employees. United State v. Muniz, 374 U.S. 150, 165, 83 S.Ct. 1850, 1859, 10 L.Ed. 2d 805 (1963), by "removing" Sovereign immunity of the United States from Suits in tort, and with certain individual would be under like circumstances. Podlog v. United States, 205 F. Supp. 2d 346, 355 (M.D.Pa.2002) aff'd 85 Fed. Appx. 873 (3d Cir. 2003) (quoting Richard v. United States, 369 U.S. 1, 6, 82 S. Ct. 585, 589, 7 L.Ed. 2d 1192 (1962)).

* IN "FTCA" claims, courts must apply the Law of the

State in which the act or omission occurred. Hedge v. United States Dep't of Justice, 372 F. Appx 264, 267 (3d Cir. 2010) (citing Gould Elecs. Inc. v. United States, 220 F.3d 169, 174 (3d Cir. 2000)). Because all of the conduct giving rise to Mr. Davis' claim occurred at Carlisle, PENNSYLVANIA STATE, law will apply.

VIII. DAMAGES

* IN assessing damages in this case, we begin with a proposition recognized by both Mr. Davis and the government:

* The federal tort claims act "FTCA", 28 U.S.C. §§ 2671-2680, governs all claims against the United States for monetary damages, for injury or loss of personal property or personal injury or death caused by the negligent [sic], wrongful act, or omission of any employee of the United States while acting within the scope of his office or employment. See, Balter v. United States, 2014 U.S. Dist.

WHEREFORE, Mr. Davis respectfully demands judgment in his favor and against the defendant(s) in an amount (not) in excess of \$250,000.00, exclusive of cost and damages for delay, and for such other relief as the court may deem appropriate.

IX. CONCLUSION

What is The legal aspect of This issue, is it Negligence or incompetence, was it by the officer(s) or of the State. We Know that these two officer(s) or liable for their action, so isn't the State liable for their Role in hiring those officer(s), who sworn them in to proform certain duties to the state and to the public, To uphold the constitution. Would anyone hire someone to Run their Business without doing a proper Back ground Check, [NO]. So in this day in time, we are all a part of a whole, then what we do affect the organization that we are apart of and the organization is responsible for our training and what we learn [in] order to proform these duties or obligations for that position. That means improper training results in improper conduct which affect the employer and also the employee. Based on the above examination, Pennsylvania Law Should apply with respect to the issue of Mr. Davis allegation of Negligence (First), The plaintiff injury causing conduct alleged occurred in Pennsylvania. (Second), the injury occurred in Carlisle, and (third), Mr. Davis was and still is a resident of Pennsylvania. So we are asking the court to look at the facts and grant the relief sought by Mr. Davis and his family, we thank you for your understanding.

3-2-21

Date

(15)

James Davis
Signature

Verification

I Damion Davis verify that the statement in the above motion are true and correct to the best of my knowledge, ~~information~~ and belief. I understand that false statements herein are made subject to penalties of 18 Pa. C.S. section 4904 relating to unsworn falsification to authorities.

Damion Davis
Signature

Damion Davis
Print

3-3-2021

Date

CERTIFICATE OF SERVICE

I, Damion Davis hereby declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that on this day 3 of March, 2021, I ask that a true and complete copy of the attached to be served in the manner described below, which should satisfy the requirements of Pa. R.C.P. 121 and to be service by mail addressed as follows.

CC:

KAROLINE MEHALCHICK - JUDGE
235 NORTH WASHINGTON AVE
P.O. BOX 1148
SCRANTON, PA. 18501-1148

DAVID J. MacMAHON - ATTORNEY FOR DEFENDANT[S]
433 WEST MARKETST Suite #200
WEST CHESTER, PA. 19382

Damion Davis
Signature

DAMION DAVIS
Print

3-3-2021
Date

"THIS CORRESPONDENCE ORIGINATES FROM AN INMATE INSTITUTION"

DAMION DAVIS

INMATE ID# 24138

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Legal Mail

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